

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v.-

JASON GALANIS,

Defendant.

15 Cr. 643 (PKC)

PETITION OF ECC SPE LLC FOR ANCILLARY HEARING

ECC SPE LLC (“Petitioner”), by and through its counsel, Rosenberg & Estis, P.C., petitions this court for an ancillary hearing pursuant to Title 21, United States Code, Section 853(n), and asserts its interest as an innocent third party with respect to property which has been forfeited to the United States in the above-styled case, as follows:

1. ECC SPE LLC asserts its interest in the following property ordered forfeited to the United States in this Court’s August 15, 2016 Consent Order of Forfeiture: (i) the real property known as and located at 260 West Broadway, Unit 1/2C, New York, New York (the “Mortgaged Property”), as more fully set forth in the accompanying Exhibit A, which is annexed hereto and incorporated herein by reference; and (ii) the property and items described in detail in Schedule B to a certain UCC-1 Financing Statement dated December 2, 2014 (as more fully described below), including, but not limited to, machinery, equipment and fixtures located in, on, and/or to the Mortgaged Property.

2. On or about December 2, 2014, Archer Diversified TCG, LLC (“Archer”) executed and delivered to Petitioner’s predecessor-in-interest, Emerald Creek Capital LLC (“Emerald”), a promissory note (“the Note”) in the principal amount of \$7,000,000.00, pursuant

to which Archer promised to repay to the lender under the Note the foregoing principal amount, together with interest thereon. A copy of the Note is annexed hereto as Exhibit B.

3. On or about December 2, 2014, Archer executed and entered into a Loan Agreement, whose terms and conditions govern, in part, Archer's obligations under the Note. A copy of the Loan Agreement is annexed hereto as Exhibit C.

4. The Loan Agreement provides that the maturity date of the Note is December 1, 2016 (unless the debt payable under the Note is accelerated). See Ex. C, p. 7. The Loan Agreement also requires that Archer tender to the lender under the Note and Loan Agreement, on the first calendar day of each month, payments of interest only on the outstanding principal balance of the loan. Id., § 2.3, p. 14.

5. As security for repayment of the Note, Archer executed a Mortgage, Assignment of Leases and Rents and Security Agreement dated December 2, 2014 (the "Mortgage"), in the original principal amount of \$7,000,000.00. The Mortgage encumbers the Mortgaged Property. The Mortgage was recorded in the Office of the City Register of the City of New York on or about January 12, 2015 under City Register File Number ("CRFN"): 2015000012083. A copy of the Mortgage is annexed hereto as Exhibit D.

6. On or about April 13, 2015, a UCC-1 Financing Statement was recorded in the Office of the City Register of the City of New York under CRFN: 2015000122267 (the "UCC1"), creating a perfected lien, and making Emerald a secured party, with respect to the property and items set forth therein, including, but not limited to, machinery, equipment and fixtures located in, on, and/or to the Mortgaged Property. A copy of the UCC1 is annexed hereto as Exhibit E and incorporated herein by reference.

7. The circumstances under which Petitioner acquired its interest in the Mortgaged Property and the property and items described in the UCC1 are as follows: by Assignment of Mortgage dated as of April 15, 2015, Emerald assigned the Mortgage and the Note to Petitioner. On or about that date, Emerald also physically transferred the original Note to Petitioner. The Assignment of Mortgage was duly recorded in the Office of the City Register of the City of New York on or about April 30, 2015 under CRFN: 2015000145724. A copy of the Assignment of Mortgage is annexed hereto as Exhibit F. By UCC Financing Statement Amendment dated April 21, 2016 (the "UCC Assignment"), and recorded in the Office of the City Register of the City of New York on or about April 22, 2016 under CRFN: 2016000140714, Emerald assigned all of its right, title and interest in the UCC1 to Petitioner. A copy of the UCC Assignment is annexed hereto as Exhibit G. Emerald's address is Emerald Creek Capital LLC, One Penn Plaza, 34th Floor, New York, New York 10119.

8. Since the time of the Assignment of Mortgage and the UCC Assignment, Petitioner has not assigned the Note, the Mortgage, or its interest in the UCC1. Thus, Petitioner is the lawful holder of the Note, Mortgage, and UCC1.

9. As of October 5, 2016, the principal due and owing under the Note is \$7,000,000.00 and the interest, late fees and other charges, including attorneys' fees, due and owing to Petitioner (less reserves and payments received) is \$2,326,603.33. Interest will continue to accrue under the Note at a rate of \$4,666.67 per diem from, and including, October 6, 2016 and thereafter. The Note is presently in default as a consequence of Archer's failure to pay installments and real estate taxes imposed against the Mortgaged Property, as provided for in the Note and/or the Loan Agreement. The Note has been continuously in default since October 1, 2015.

10. The Loan Agreement requires Archer to obtain and maintain, or cause to be maintained, casualty insurance on the Mortgaged Property in an amount equal to 100% of the Full Replacement Cost, as set forth in § 5.1(a) of the Loan Agreement. See Ex. C. Petitioner has not paid casualty insurance premiums with respect to the Mortgaged Property.

11. Pursuant to 21 U.S.C. § 853(n)(6), Petitioner has a prior vested or superior interest in the Mortgaged Property or is a bona fide purchaser for value of the right, title, or interest in the above-described Mortgaged Property and was at the time of purchase reasonably without cause to believe that the Mortgaged Property was subject to forfeiture.

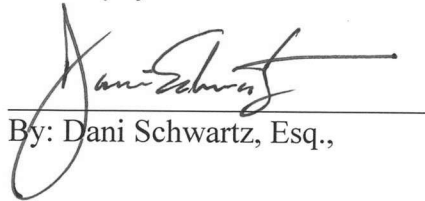
12. The Petitioner seeks relief from this Court's Preliminary Order of Forfeiture and hereby requests that: (i) this Honorable Court hold a hearing ancillary to the criminal conviction of Jason Galanis at which the Petitioner may testify and present evidence and witnesses on its own behalf pursuant to 21 U.S.C. § 853(n)(5); and (ii) this Court amend its Preliminary Order of Forfeiture dated August 15, 2016 to recognize fully the interest of Petitioner as it is set forth herein.

Dated: October 7, 2016

Respectfully submitted,

ROSENBERG & ESTIS, P.C.

Attorneys for Petitioner ECC SPE LLC

A handwritten signature in black ink, appearing to read "Dani Schwartz", is written over a horizontal line.

By: Dani Schwartz, Esq.,